

An overview of your rights to your personal information held and processed by Basingstoke and Deane Borough Council under the GDPR and the Data Protection Act 2018

Exercising Your Data Subject Rights

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Basingstoke and Deane Borough
Council

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Introduction to Data Protection Legislation

The Data Protection Act 2018 and the GDPR

On 25th May 2018, the General Data Protection Regulation (GDPR) came into force. The Data Protection Act 2018 which also took effect on the same day supplements and enhances the GDPR. These new pieces of legislation replace the old Data Protection Act 1998 and old EU data protection laws.

The new legislation gives individuals greater rights over their personal information and imposes greater data protection obligations on organisations.

Basingstoke and Deane Borough Council has created this guide to explain your data subject access rights and to provide details on how you can make requests in relation to information which we hold about you.

This guide also explains how we will process your requests and provides guidance on commonly asked questions which you may have.

This guide contains a glossary of the commonly used data protection terms in the GDPR and Data Protection Act 2018. These terms are used throughout this guide.

Data Subject Access Rights

The GDPR gives individuals a number of rights which include:

- The right to be informed
- The right of access
- The right to rectification
- The right to erasure
- The right to restrict processing
- The right to data portability
- The right to object
- Rights in relation to automated decision making and profiling
- The right to be informed of a data security breach

Please note that these rights are not absolute and are subject to a number of conditions and exemptions. We may apply these conditions and exemptions to any request which we receive from you.

Some of the above rights will only apply if the processing activity is undertaken on specific legal grounds and/or in particular circumstances. It is unlikely that all of your rights will be engaged at once. In some circumstances your rights may not be

engaged and your request may be subject to exemptions and conditions in any event.

The Information Commissioner's Office (ICO)

What is the ICO?

The Information Commissioner's Office (referred to throughout this guide as the ICO) is the UK's independent authority for information matters. The ICO upholds information rights in the public interest.

The ICO deals with a wide range of information matters ranging from data protection requests to statutory requests to local authorities such as freedom of information requests.

The ICO deals with complaints and concerns raised by individuals. If you are not satisfied with how we handle your personal information or how we have responded to your request, you have the right to raise the issue with the ICO.

The ICO website can be accessed at <https://ico.org.uk/> and also provides guidance on your data subject rights.

Contact Details

The ICO can be contacted:

By email: casework@ico.org.uk

By Post: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, SK9 5AF

Your Data Subject Access Rights Explained

Right to be Informed

In order to fulfill our obligations of fair and transparent processing we have to provide you with certain information when we collect personal information from you. This will usually be done by way of a privacy notice.

We must inform you why we need to process your personal information, how we propose to use it, who we intend to share your information with and the safeguards which we have in place to protect it.

We will usually inform you if we need to share your information with any third parties, or if we receive information about you from someone else. There may be occasions where we do not inform you, this is likely to be when we are aware that you already have this information or where the law permits the sharing of information, for example where there is ongoing law enforcement and, or criminal investigations.

We meet these obligations in a number of ways, these vary depending on how you get in contact with us. We may inform you by directing you to our privacy notice, which can be found on our website, or by providing a statement on an application form.

<https://www.basingstoke.gov.uk/privacystatement>

Right to Access Personal Data

You have the right to find out if we hold any of your personal information and, if we do, to ask for a copy of that information. You can make a request for a copy of your personal information by making a subject access request.

When we respond to a subject access request, you are also entitled to receive the following information:

- the reasons why we are using your information
- the types of personal information we process and what we use it for
- the recipients or categories of recipient who we share your information with
- the length of time which we will store your data and our reasons for this period of time
- the rights to challenge the accuracy of the information we hold such as erasure and objection to use of your information
- the right to complain to the Information Commissioner's Office

- the source of any personal information we hold
- whether or not decisions are made about you solely using automated means and our processes of doing this
- whether we have transferred your information to a third country or an international organisation and any security measures which we have taken

Most of this information is available as part of our privacy notice.

In making a subject access request you have the right to access your own personal information. Personal information is information which relates to or identifies you as an individual. You do not have a right to access anyone else's personal information.

If you make a joint subject access request with another person, we will need to see sufficient evidence from that person that they consent to their personal information being released to you.

In responding to your subject access request we will inform you if we have exempted or redacted any information from disclosure and the reasons for this, where it is possible for us to do so.

We may in some circumstances refuse to respond to your subject access request, if this is the case, we will let you know the reasons for our refusal.

Rectification

You have the right to challenge the accuracy of personal information which we hold. You can ask for incorrect information to be corrected or you may ask for it to be deleted. If your information is incomplete or not up to date, you can also ask us to update it. For more information about deleting your personal information, please see the right of erasure.

Upon receiving a rectification request, we will investigate whether the information held, is accurate. We will consider your supporting evidence and arguments when making our decision about whether to correct the information.

We will let you know the outcome of your request and inform you of the steps taken. If we decide to refuse your request for rectification or to not correct the information we hold, we will let you know the reasons for doing this, where we are able to do so.

We will record that you have made a challenge to the accuracy of the personal information which we hold and the reasons why you believe the information is incorrect and the decision we make regarding that data.

If we have shared your personal information with other organisations, then we will inform them that your information has been corrected or updated, as far as we are

able to do so. We will inform you who has received your personal information, if you ask us. Please see Right to be Informed for further information.

Erasure

In certain circumstances, you have the right to make a request for the erasure of your personal information. This is also known as the right to be forgotten.

The right to erasure is not absolute and will only apply in the following circumstances:

- We are storing your information for longer than is necessary for the purpose it was collected for and where there is no legal obligation for us to continue to store, publish or process it
- You have withdrawn consent for us to process your information (this will only apply where the only reason we are able to process your information is with your consent)
- You objected to the use of your information and you have later decided to make a further request to delete it
- We have collected or used your information unlawfully
- We have a legal obligation to erase your information
- We collected information from you when you were a child and you now wish to have this erased

In our response we will carefully consider whether your information should be erased. If we refuse your request we will explain the reasons for our decision and your rights to complain to the ICO if you are not satisfied.

Please note that we can refuse an erasure request if it is necessary for us to retain your information for:

- exercising the right of freedom of expression and journalism
- compliance with legal obligations
- public health reasons
- archiving purposes in the public interest or historical, scientific or statistical purposes
- establishment, exercise or defence of legal claims

If we decide to delete your information, we will inform other organisations whom we have shared your information with about the erasure, where it is possible for us to do so. We will inform you who has received your information, if you ask us. Please see Right to be Informed for further details.

Objections to Processing

You have the right to object to the processing of your personal information where it is being processed for the following purposes:

- direct marketing
- profiling in connection to direct marketing or for other purposes
- performing our statutory functions, tasks carried out in the public interest or when exercising our official authority
- our legitimate interests or those of a third party
- scientific, historical or statistical research unless it is in the public interest to process your data.

If you object to us using your information for direct marketing or profiling in connection to direct marketing, we will stop processing your information for these purposes.

If you object to us processing your information in connection to scientific, historical or statistical research, you should set out your reasons for objecting to this use. We will carefully consider whether the processing of your information is necessary and in the public interest. If it is in the public interest to process your information, then we may refuse your request.

If you object to us processing your information for any other purpose we will consider if there are any compelling legitimate reasons for us to continue processing it. We will also consider whether these legitimate reasons are sufficiently compelling to override your privacy rights.

Restrictions on Processing

You have a right to limit how we use your personal information in certain circumstances.

You can make a request to restrict the processing of your information where:

- you have challenged the accuracy of your information (a rectification request)
- you object to the use of your information
- you do not want us to delete your information, where we have unlawfully processed it
- you want us to keep your information so that you can use it to create, exercise or defend legal claims

In your request you should explain why you want to restrict the use of your information.

We will consider your request and we will let you know if we agree to the restriction of your information. If we agree to your request we will store your information carefully but we will not process it until the restriction has been lifted. We will only process your information where:

- you give consent
- it is necessary for establishment, exercise or defence of legal claims
- it is necessary for protecting another person's rights
- it is necessary for important public interest reasons

Where we have restricted the use of your information pending the outcome of a rectification or objection request, we will let you know the outcome of these requests before we remove the restriction on your information.

Data Portability

You have a right to receive personal information in a format which is accessible and machine readable. You also have the right to request that we transfer your information to another organisation, where it is technically feasible for us to do so.

Your right to receive information in a portable form applies to your information which is held electronically and which you have provided to us. This right also only applies to automated data processing that is either based on your consent or which is necessary to perform a contact between you and the Council.

When making a request for us to transfer your information or to provide it to you in an accessible format, please state clearly the information that you require.

In most cases this right will apply when changing provider for things such as utilities or mobile phones. There are unlikely to be many circumstances where information held by the council will be subject to this right.

Automated Decision Making

Automated decisions are those made without human involvement. These types of decisions may also be referred to as automated processing or automated profiling.

You have the right to prevent the ways in which automated decisions are made about you. You specifically have the right not to be subject to an automated decision if it affects your legal rights or other equally important matters. You have the right to

understand the reasons behind automated decisions and to object to them in certain situations.

We may make automated decisions in very limited circumstances such as where we are authorised to do so by the law, where it is necessary for us to do so as part of a contract with you and where we have your explicit consent.

Where an automated decision is made, you are entitled to be informed that our processing activity involves an automated decision and to be informed about the logic behind the decision and the likely consequences for you. We can also let you know about the safeguarding measures which we have in place to protect your privacy.

You can contest an automated decision which has been made about you or request that an automated decision be reconsidered. If you would like us to stop making automated decisions about you, or if you would like us to explain any automated decisions which have been made, you can submit a request to us.

Notification of Personal Data Breaches

We must inform you if there has been a data breach which is likely to result in a high risk to your rights and freedoms. We must report the breach to the ICO where the breach is likely to result in a risk to your rights and freedoms.

A data breach is a breach of security which results in accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to your personal information.

We must assess data breaches on a case by case basis. Breaches which are likely to have a detrimental effect on individuals are those which involve:

- discrimination
- financial loss
- damage to reputation
- loss of confidentiality or any other economic or social disadvantage.

There will be certain circumstances where we will not have to inform you about a breach such as:

- where we have implemented technical and organisational measures to protect the personal data affected by the breach, for example by encrypting laptops or other portable devices
- where we have taken steps which will minimise any high risk to your rights and freedoms

- where it would involve disproportionate effort to inform you

We may inform you via a public announcement if it would be disproportionate to inform you individually.

How to Exercise Your Rights

Making a Request

All requests should be made to the Information Governance Team so that your request is dealt with as quickly as possible. Your request should be addressed to the Data Protection Officer.

You can make a request verbally or in writing. If you wish to make a request you should use the contact details below:

By post to:

Data Protection Officer, Basingstoke and Deane Borough Council, Civic Offices, London Road, Basingstoke, Hampshire, RG21 4AH

By email to:

dpo@basingstoke.gov.uk

By phone to:

01256 845369

In your request you should let us know what you want us to do. For example, whether you want a copy of your personal information or whether you are objecting to our processing of your information.

If you are making a request for a copy of your information you should clearly state the specific information which you require, this will greatly assist us in processing your request.

Please provide us with the following information:

- Your name and contact details
- Any reference numbers and details of council departments and officers who are likely to hold your data
- Any details and relevant dates that will enable us to identify the information requested
- Your preferred format that you would like to receive your information, either electronic or hard copy.

Our Response

Upon receipt of your request, we will formally log it and provide you with an acknowledgement with an individual reference number. You should keep this acknowledgement safe and quote your reference number in any subsequent correspondence to us.

In our acknowledgement we will confirm what you have requested and provide you with a timescale for our response. We will also let you know if we need any further information from you before we can process your request.

In order to ensure the security of your personal information we need to be able to verify your identity.

We have one calendar month to respond to your request. Under the GDPR, we may extend this time limit by a further two months if your request is complex or involves a lot of information. We will let you know if this is the case. In our acknowledgement we will inform you of the time limit we have to respond to your request.

In our response we will confirm the action we have undertaken or provide you with a copy of the information you have requested if it is possible for us to do so. If we are not able to fulfil your request we will let you know the reasons for this and inform you of your right to appeal our decision.

We can refuse your request if it is manifestly unfounded or excessive. We may withhold information where the relevant legislation in force at the time allows us to do so.

If you request a copy of your personal information, we will be unable to provide the personal information of any third party. In cases such as this we may withhold or redact the personal information of anyone else. We have an obligation to balance your right to access your information against the rights of other individuals regarding their information.

Frequently Asked Questions

When is identification required?

In order to process your request we need to be able to verify your identity.

We need to be sure that none of your personal information is accessed or interfered with by anyone falsely claiming to be you. We also need to guarantee that we are locating your personal information and not that of someone who has the same name.

We will let you know as soon as possible if we need you to provide us with identification. If we request identification we will require copies of documents such as a driving licence or passport and a recent utility bill dated within the past 3 months.

The time limit to process your request will not commence until we have verified your identity.

Can someone else make a request for me?

A third party may make a request on your behalf, this may be a friend, relative or a solicitor. Anyone making a request on your behalf must supply us with written authority from you to confirm that they are acting on your behalf. Additionally, we may still require identification from you and we may contact you to confirm that we have received a request on your behalf.

There may be some circumstances where we will release the information requested directly to you rather than to your representative. This will usually only be the case, where we think you may wish to view the information provided before disclosing it to your representative. It is your decision whether you then chose to share this with your representative.

Is there a charge?

We will not usually charge you when you make a request, however this may vary subject to the legislation in force at the time.

Currently we will only charge you a reasonable fee for administration costs where your request is manifestly unfounded or excessive or where you make a request for further copies of the information we have already provided to you.

Any costs charged will be based on the administrative costs of complying with your request.

Where we charge a fee for dealing with your request, we do not have to comply with the request until we received the fee from you.

When can we refuse a request?

We can refuse to comply with your request if it is manifestly unfounded or excessive. When refusing your request we will also consider whether it is repetitive in nature.

If we refuse your request we will let you know the reasons where it is possible for us to do so.

We may refuse our request where we are permitted to do so, by the legislation currently in force. The Data Protection Act 2018, contains a number of exemptions which we may rely upon, when responding to your request. These exemptions may either lead to a refusal of your request or we may redact or withhold information from our response.

If we refuse whole or part of your request, we will let you know the reasons for this, where it is possible for us to do so.

What if a requester lacks mental capacity?

Where a requester lacks mental capacity, a person with a lasting power of attorney, may exercise the requester's data protection rights on their behalf.

What about children's' personal data?

Children have a right to their own personal information, irrespective of their age, the right to their data belongs to them and not a parent or guardian. Parents or guardians may commonly exercise the child's rights in the cases of younger children.

When responding to requests which concern a child's information, we will consider the child's ability to understand their rights and whether we should be releasing their information to them directly.

In Scotland it is presumed that children aged 12 years or over are a sufficient age and maturity to exercise their data subject rights. In England there is no presumption so we will therefore consider each request on a case by case basis. We may allow a

parent or guardian to exercise the child's rights on their behalf where the child provides consent for doing so or where it is evident that it is in the child's best interests for someone to exercise their rights for them.

As we are a district local authority and we don't have responsibility for education or children's services, it is unlikely that we will hold a lot of information regarding children.

What is the time limit to respond?

We aim to respond to your request without undue delay. Under the current legislation we have one calendar month to respond to your request.

One calendar month is calculated from the first working day after we receive your request. Should we require identification or clarification from you, the time limit will not start until we are satisfied with your identification documents and/ or we have received clarification.

If your request is complex, we may need to extend the time limit to respond to you. The GDPR allows us to extend the time limit by a further two calendar months. If we need to extend the deadline, then we will let you know as soon as possible.

We will let you know the date which we aim to respond by when we acknowledge receipt of your request.

Can I choose the format in which my information is supplied?

We will usually respond to you in the same format which you used to make your request. For example where you submit a request electronically via email, we will usually respond in the same way where it is possible for us to do so. If you ask us to respond in a particular format we will try to accommodate your request.

When you make a verbal request, we will contact you to check the exact information which you have requested and to confirm the format which you would like to receive the information.

Where you ask for multiple copies of the information provided to you under a request, we may charge fee for the administrative costs.

Will I receive all the information that I have requested?

We will try to provide you with all the information, which you have requested. However in some circumstances we will not be able to do this.

If we are not able to release all the information, we will let you know the reasons for this where it is possible for us to do so.

It is your right to access your own information, and this right does not extend to information about other people. In processing your request we have an obligation not to adversely affect the rights and freedoms of others.

In light of this obligation we may therefore redact information which relates to other individuals and third parties, where we are satisfied that it is reasonable in the circumstances to do so. There may be some circumstances where the information we hold is interlinked to the extent that we cannot fulfil your request without breaching another person's privacy rights.

In some circumstances we may be able to release other individuals' and third parties' information, where they provide consent for us to do so.

The law recognises that there are occasions when it is appropriate to withhold certain information. There are a number of exemptions which can be applied in specified circumstances.

We will try to let you know the reasons for not fulfilling your request and which exemptions we are relying upon, where it is possible for us to do so.

What can I do if I am not satisfied with your response?

If you do not hear from us by the latest due date, you should contact us to check the progress of your request.

If you are not satisfied with our response to your request, or if you do not hear from us by the latest due date please contact us so that we can review how we have dealt with your request.

If you remain unhappy with the way we have dealt with your request you have the right to complain to the ICO.

The ICO will investigate into the matter, upon receipt of your complaint and supporting documents.

For further information in making a complaint to the ICO please see their website: <https://ico.org.uk/make-a-complaint/>

The ICO can be contacted:

By email:

casework@ico.org.uk

By Post:

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow,
SK9 5AF

Contact Us

Data Protection Officer

Jackie Tatam
Data Protection Officer
Basingstoke and Deane Borough Council

Post

Basingstoke and Deane Borough Council
Civic Offices
London Road
Basingstoke
Hampshire
RG21 4AH

Email

dpo@basingstoke.gov.uk

Telephone

01256 844844

Glossary

Definitions of Key Data Protection Terms

“**Personal information**” means any information relating to an identified or identifiable living person. An identifiable person is anyone who can be identified, directly or indirectly, by reference to an identifier, such as a name, identification number or online identifier.

“**Special Category or Sensitive Personal information**” is information revealing racial or ethnic origin, political opinions, religious or similar beliefs, trade union membership, physical or mental health conditions, sexual life, sexual orientation, biometric or genetic data, and personal information relating to criminal offences and convictions.

“**Processing**” means any activity that involves the use of personal information. It includes obtaining, recording or holding the information, or carrying out any operation or set of operations on the information including organising, amending, retrieving, using, disclosing, erasing or destroying it. Processing also includes transmitting or transferring personal information to other Recipients.

“**Data Subject**” a living, identified or identifiable individual about whom we as a Data Controller hold personal information.

“**Data Controller**” means the person or organisation (in this case us) that determines when, why and how to process personal information.

“**Privacy Notices**” are notices setting out the information given to you at the time we collect information from you or within a reasonable time period after we obtain information about you from someone else. These notices may take the form of an overarching privacy statement (as available on our web site) or apply to a specific group of individuals (for example, service specific or employee privacy notices) or they may be stand-alone, one time privacy statements covering processing related to a specific purpose.

“**Consent**” must be freely given, specific, informed and unambiguous indication of an individuals’ wishes by which they, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to them.

“**Explicit Consent**” requires a very clear and specific statement, leaving no room for misinterpretation.

“**Third Party**” is a living individual other than the person who is the data subject

“**Recipient**” means a person or organisation who receives your personal information from us. This may be a company with whom we have entered into a contract to

provide services on our behalf or another Controller with whom we are either required or permitted to share personal information.

“**Latest due date**” means one calendar month counted from the first working day after proof of ID and any requested information is received by us, except where this falls on a weekend or a bank holiday in which case the “latest due date” is treated as the first working day after the weekend or bank holiday. The same method is applied to calculating the “latest due date” for complex requests where an extension of time is permitted and claimed.

“**Automated Processing**” means any processing of personal information that is automated through the use of computers and computer software.

“**Automated Decision-Making (ADM)**” means a decision which is based solely on Automated Processing (including Profiling) which produces legal effects or significantly affects an individual. The GDPR generally prohibits Automated Decision-Making except in defined circumstances, subject to certain conditions and safeguards being met.

“**Profiling**” means the recording and analysis of a person's psychological and behavioural characteristics, so as to assess or predict their capabilities in a certain sphere or to assist in identifying categories of people.

“**General Information Protection Regulation (GDPR)**” means the General Information Protection Regulation ((EU) 2016/679).

“**Data Protection Act 2018**” means UK legislation that repeals the 1998 Act; implements discretions delegated to EU Member States under the GDPR; provides for the role, responsibilities and enforcement powers of the Information Commissioner and sets data protection standards for processing activities that do not fall within the purview of the GDPR.